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Leslie Grober
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

**SUBJECT: COMMENTS ON PROPOSED BASIN PLAN AMENDMENT FOR THE
CONTROL OF SALT AND BORON DISCHARGES INTO THE SAN
JOAQUIN RIVER**

Dear Mr. Grober:

This firm is special counsel to the Cities of Davis, Roseville and Vacaville and the Sacramento Regional County Sanitation District. On behalf of these agencies, we appreciate the opportunity to provide comments on the proposed total maximum daily load (TMDL) for salts and boron in the San Joaquin River, as described in the November 2003 Public Review Draft and at the December 5, 2003 regional board workshop. While none of these agencies discharge to the San Joaquin River, and thus are not directly affected by the proposed Basin Plan amendment, each of the agencies has an interest in ensuring that TMDLs and water quality objectives are reasonably achievable and are adopted in accordance with applicable law.

With regard to the proposed Basin Plan amendment, the water quality objectives serving as the TMDL target must be evaluated pursuant to Water Code section 13241 before being applied as targets. Water Code section 13241 sets forth factors to be considered by a regional board in establishing water quality objectives. Among these factors are "water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area" and "economic considerations." (Wat. Code §13241.) The Water Code also requires the development of a program of implementation for the objectives. (Wat. Code

§13242.) A California court recently held that these factors are to be considered whenever a Basin Plan is amended, regardless of whether a new objective is proposed. (*City of Arcadia, et. a. v. SWRCB, et al*, San Diego Superior Court case No. GIC803631 (December 24, 2003).) The court ruled that adoption of a TMDL constitutes implementation of an objective, requiring an analysis of the section 13241 factors.

There is no question that Delta salinity has been a significant issue for the Central Valley Regional Board and the State Water Resources Control Board for nearly 40 years. The focus of the salinity objectives has traditionally been on the impact of diversions and flow on Delta salinity. While the salinity objectives for the Delta have been discussed, analyzed and evaluated since the 1960's, implementation of actions to achieve such objectives has primarily been reliant upon river flow and subsequent water rights decisions. "Most of the objectives in this plan will be implemented by assigning responsibilities to water rights holders because the factors to be controlled are primarily related to flows and diversions." (Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, 95-1WR, (May 1995) at page 4.) During this long history of developing salinity objectives and programs of implementation, municipal wastewater has never been identified as a major contributor to salinity in the San Joaquin River, nor has a program of implementation been developed that would apply these objectives to municipal wastewater treatment plants as end-of-pipe limitations. In the numerous analyses prepared regarding salinity control in the Delta, neither the State Water Board nor the Regional Board have ever analyzed the use of the salinity objectives as the basis for end-of-the-pipe effluent limits as part of the program of implementation. As such, the Regional Board and the State Water Board have never analyzed such actions in light of the public interest factors set forth in Water Code section 13241.

Nor does the staff report for the draft basin plan amendment evaluate the application of the Vernalis water quality objectives to municipal wastewater pursuant to section 13241. The proposed application of a downstream water quality objective to an upstream effluent discharge establishes a new water quality objective, applicable to those waters for the first time. The proposed application of this downstream objective ignores the significant effects of dilution from the Tuolumne and Stanislaus Rivers. This is especially troubling, given that the regional board is in the process of developing upstream water quality objectives through the appropriate rulemaking process. This is a classic case of "the cart before the horse." It is premature for the Regional Board to adopt this basin plan amendment and TMDL until the Regional Board has completed its process of adopting upstream water quality objectives. These new water quality objectives, which should be adopted after considering the best available technical information and carefully analyzing the economic impacts, should serve as the target for the TMDL.

This analysis is a critical component of any proposed Basin plan amendment. We urge the regional board staff to conduct the requisite analysis of the proposed amendment and fully disclose the potential impacts on municipalities prior to seeking regional board approval.

Thank you for consideration of our comments.

Sincerely,

Roberta L. Larson

RLL/jlp

cc: Wendell Kido, Sacramento Regional County Sanitation District
Arthur J. O'Brien, Wastewater Utility Manager, City of Roseville
Keith Smith, Wastewater Administrator, City of Davis
David K. Tompkins, City of Vacaville